

EXHIBIT C

Reported by:
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EXAMINATION (Continuing)

BY MR. BRENNAN:

Q. Let me just take a detour for a moment, because we've been talking about information and providing information. Are you aware that at the time that Finisar commenced this litigation, that it offered to U.S. Bank to provide it as well as to holders copies of its most current unaudited and preliminary financial statements subject to an appropriate confidentiality and nondisclosure agreement?

A. I am aware.

Q. And are you aware that that offer was made to U.S. Bank on March 2nd, 2007?

A. I couldn't say the date exactly. What I understand is that the confidentiality agreement never came to fruition.

MR. BRENNAN: I'll have our reporter mark as our next exhibit in order a correspondence from Finisar Corporation, Steve Workman to Thomas Tabor, vice president of U.S. Bank Trust National Association, dated March 2nd, 2007. And it comprises U.S. Bank's production number USB FIN 000249 and 000250.

(Exhibit No. 5 marked
for identification.)

Q. (BY MR. BRENNAN) Ms. Jacobs, do you recognize what's been marked for identification as Deposition Exhibit 5?

A. I would have to read it. I don't think I've read this.

1 Q. Sure. Take a minute.

2 A. Okay.

3 Q. Have you previously seen the original or a copy of Exhibit 5?

4 A. I believe I have.

5 Q. And who provided that to you?

6 A. Mr. Tabor, I think.

7 Q. And when did he provide a copy of Exhibit 5 to you?

8 A. I believe it was in the files that he sent to me.

9 Q. Okay. If you'd look down about halfway through the first
10 paragraph, it says, "Nonetheless, in its continuing efforts
11 to do all that it reasonably can to keep the trustee and
12 holders informed of its financial condition, particularly
13 during this period when, as Finisar has previously explained,
14 it is undertaking a review of its historical stock option
15 grant practices, Finisar is further willing to provide to the
16 trustee and to holders copies of its most current unaudited
17 and preliminary financial statements subject to an
18 appropriate confidentiality and nondisclosure agreement.
19 Finisar is continuing to cooperate with the SEC to allow it
20 to make additional public disclosures of its financial
21 condition, but in the meantime the reference statement should
22 provide the trustee with substantial financial information
23 that typically would be contained in Forms 10-Q for Finisar's
24 second and third fiscal quarters."

25 Did U.S. Bank respond to Finisar's offer made on March

1 2nd, 2007, to provide then-current unaudited and preliminary
2 financial statements subject to a confidentiality and
3 nondisclosure agreement?

4 A. What I understand is that my counsel, Faegre, was in
5 negotiations with probably your firm to -- for the
6 confidentiality and nondisclosure agreement, and that you
7 could not -- parties could not come to terms. There was
8 never a confidentiality agreement finalized.

9 Q. When did Faegre or any other counsel acting on behalf of U.S.
10 Bank respond to this offer made on March 2nd, 2007?

11 A. I can't say exactly when they responded to this offer. What
12 I recall that related to this offer was the terms were
13 discussed between the parties and that they couldn't come to
14 agreement.

15 Q. Still in Exhibit 5. If you look at the second paragraph on
16 Page 1 that carries over to Page 2, it says, quote, In
17 addition to the foregoing, a transcript of Finisar's fiscal
18 second quarter 2007 financial results Web cast conducted on
19 November 30, 2006, is presently available on Finisar's Web
20 site at www.Finisar.com under the tabs Company and then
21 Investor Relations.

22 Have you ever reviewed that referenced transcript?

23 A. No.

24 Q. To your knowledge, did anyone at U.S. Bank follow up on the
25 offered information by Finisar and review the transcript of

1 Finisar's fiscal second quarter 2007 financial results?

2 A. To my knowledge, no.

3 Q. And why not?

4 MR. WAHL: You're asking her why she
5 didn't or why no one did?

6 MR. BRENNAN: Well, since she's the
7 designee for U.S. Bank, I'll ask her both capacities.

8 MR. WAHL: Object to the form.

9 Answer if you can.

10 THE WITNESS: Regarding the second one, I
11 can't speak to anybody else at U.S. Bank. But the -- I guess
12 we were -- thought that what we were looking for were the
13 complete and audited 10-Qs, and that anything that wasn't as
14 robust was not -- you know, wouldn't comply with the
15 indenture.

16 Q. (BY MR. BRENNAN) So if there was financial information that
17 would be made available to the holders and U.S. Bank that
18 would provide a significant portion of the information but
19 otherwise would be set forth in a 10-Q, U.S. Bank nonetheless
20 had no interest in that information?

21 MR. WAHL: Object to the form.

22 THE WITNESS: Yeah, I wouldn't say no
23 interest. I would just sort of repeat what I said before.

24 Q. (BY MR. BRENNAN) Okay. Turning back to the paragraph we were
25 looking at on Page 1 of Exhibit 5, it continues,

1 "Furthermore, Finisar's fiscal third quarter 2007 financial
2 results Web cast is scheduled for this coming March 5, 2007,
3 at 2 o'clock p.m., PT" -- or Pacific time. "The referenced
4 Finisar Web site can provide you further details regarding
5 accessing this coming Monday's Web cast."

6 Did you listen or participate in that Web cast?

7 A. No.

8 Q. To your knowledge, did Mr. Tabor do so?

9 A. Not to my knowledge.

10 Q. To your knowledge, did anyone at U.S. Bank listen in on or
11 participate in the referenced Web cast?

12 A. Not to my knowledge.

13 Q. Why not?

14 A. I would give the same answer that I gave to your question
15 about the transcript.

16 Q. And the last paragraph of Exhibit 5 on the second page, it
17 says, quote, Please let us know as soon as possible whether
18 the proposed arrangement regarding Finisar's provision of
19 unaudited preliminary financial statements is acceptable and
20 agreeable to the trustee. If so, Finisar will promptly
21 provide you a proposed NDA for your review and approval, end
22 quote.

23 Do you know whether Mr. Tabor got back to Finisar
24 regarding that proposed arrangement?

25 A. I don't know whether Mr. Tabor did.

1 Q. Did you?

2 A. What I know is that counsel -- again, as I understood it from
3 that point, it went to reviewing the NDA between -- among
4 counsel and that that's where it proceeded from there and
5 didn't go any further.

6 Q. When was counsel involved in reviewing an NDA?

7 A. I couldn't tell you the exact dates, but just my
8 recollection, that there was discussion back and forth about
9 the terms of the NDA.

10 Q. Were there discussions regarding an NDA in March of 2007?

11 A. I don't remember the dates.

12 Q. April of 2007?

13 A. I really don't remember the dates. I'm sorry.

14 Q. And not to be boorish here, but just so I can try to pin it
15 down: What about April of 2007? I asked that. Let me move
16 to May -- I'm sorry -- May of 2007.

17 A. I think there are documents, aren't there, that indicate when
18 the negotiations took place?

19 Q. There are. And my suggestion would be it was many months
20 after this letter was sent. And I'm just trying to figure
21 out if you have any different recollection.

22 A. No, I don't have a different recollection. I didn't know how
23 much time had passed. So if you say many months, then that
24 sounds okay.

25 Q. Well, let's next look at an item of correspondence that is

1 dated March 5th, 2007. And it's from Steve Workman of
2 Finisar Corporation and it is addressed to Mr. Tabor, dated
3 March 5th, 2007, and it bears U.S. Bank's production number
4 USB FIN 000779 and 780.

5 (Exhibit No. 6 marked
6 for identification.)

7 Q. (BY MR. BRENNAN) Do you recognize what's been marked as
8 Deposition Exhibit 6?

9 A. Yes.

10 Q. Have you previously seen the original or a copy of Exhibit 6?

11 A. I believe I have.

12 Q. Who provided it to you?

13 A. Mr. Tabor.

14 Q. And when did he provide a copy of Exhibit 6 to you?

15 A. I believe it was with his files that he sent to me.

16 Q. And you'll notice that in the second paragraph of Exhibit 6,
17 it says, "In addition, in my letter to you this past Friday
18 March 2, 2007, I proposed that in Finisar's continuing
19 efforts to do all that it reasonably can to keep the trustees
20 and holders of the notes informed of its financial condition,
21 particularly during this period when, as Finisar previously
22 explained, it is undertaking review of its historical stock
23 option grant practices, Finisar would provide to the trustee
24 and to holders copies of its most current unaudited and
25 preliminary financial statements, subject to an appropriate

1 confidentiality and nondisclosure agreement NDA.

2 In furtherance of that proposal, enclosed is a form NDA
3 that we offer for U.S. Bank's review and, as we hope,
4 approval. We further ask that in light of the foregoing and
5 the information that I furnished you in my letter this past
6 Friday, U.S. Bank withdraw its notices of default dated
7 January 4, 2007."

8 Now, do you recall whether accompanied with
9 Mr. Workman's letter to Mr. Tabor, which comprises Exhibit 6,
10 whether a draft form of NDA was also provided to U.S. Bank?
11 A. I'm trying to remember. I can't say with certainty that it
12 was. I assume it was since he says it was.

13 Q. Well, hopefully, Mr. Workman is a man of his word. I've
14 experienced him to be such.

15 Let's take a look at Exhibit 7.

16 (Exhibit No. 7 marked
17 for identification.)

18 Q. (BY MR. BRENNAN) Exhibit 7 appears to be dated March 5, 2007,
19 on Finisar letterhead. I would note for the record that
20 Exhibit 7 comprises production control numbers USB FIN
21 000776, 777, and 778, although I do believe that there is a
22 page missing from this. And I have gone through the
23 production and just couldn't find what I think is the missing
24 page. That's just for purposes of disclosure.

25 MR. WAHL: I'll represent to you that we

1 processed them. If they were hard copies, they were sent to
2 a vendor for scanning. If they were produced to us
3 electronically, we reviewed them and produced them.

4 So I believe that's what there is. I assume you have
5 another page in your official files.

6 MR. BRENNAN: Yeah. I'm not making an
7 accusation; I'm just observing that there's a missing page.

8 MR. WAHL: I understand.

9 Q. (BY MR. BRENNAN) Ms. Jacobs, do you recognize what's been
10 marked as Exhibit 7?

11 A. I don't recognize this. I mean, I know what it is.

12 Q. What do you think it is?

13 A. I just don't remember -- I think it's the terms of the
14 confidentiality agreement.

15 Q. Okay. Now, did Mr. Tabor respond to Mr. Workman's March 5th
16 correspondence marked as Exhibit 6 in the March 5th NDA that
17 he sent along with it; that is, Mr. Workman sent along?

18 A. I don't know if Mr. Tabor responded.

19 Q. Did you respond to the March 5th letter and the accompanying
20 nondisclosure agreement?

21 A. To Mr. Workman?

22 Q. Yes.

23 A. No.

24 Q. Did you respond to anyone acting on behalf of Finisar with
25 respect to the March 5th, 2007, correspondence and the

1 accompanying nondisclosure agreement?

2 A. No. What I would have done if I had this was I would have
3 forwarded it on to counsel to review.

4 Q. To your knowledge, did counsel -- and by that I assume the
5 Faegre & Benson firm.

6 A. Yes.

7 Q. Did anyone at Faegre & Benson respond to Mr. Workman or to
8 Finisar's legal counsel regarding the March 5th, 2007,
9 further offer to provide information and the enclosed NDA?

10 A. I think I can only state that I know that, as I said before,
11 there were discussions back and forth about the NDA. So
12 that's all I can say. I don't know if -- I don't think
13 Faegre would respond directly to Finisar. I don't think they
14 had conversations with their legal counsel. I think that's
15 all I can really say.

16 Q. Have you ever seen any communications from Faegre & Benson to
17 me or my law firm, for example, regarding the March 5th NDA?

18 A. What I recollect are communications back and forth regarding
19 negotiating the NDA. I'm not sure if it was the March 5th
20 NDA.

21 Q. I had asked you earlier about annual reports in your Section
22 7.14 of the indenture. Did you see in the production any
23 report that might have been provided at any time prior to
24 2007?

25 A. I thought that there was -- that the report that was

1 that.

2 Q. (BY MR. BRENNAN) Has U.S. Bank at any time ever sought to
3 take any action with respect to pursuing any remedy against
4 Finisar for alleged defaults under the indentures and the
5 notes?

6 A. Have we sought any remedy?

7 Q. Yes.

8 A. The only remedy under the indenture is acceleration.

9 Q. Okay. So has U.S. Bank at any time ever sought acceleration?

10 A. No.

11 Q. Why not?

12 MR. WAHL: Same objection.

13 THE WITNESS: I think that's back to the
14 same question.

15 Q. (BY MR. BRENNAN) You're not able to answer the question?

16 A. Right, correct.

17 Q. Do you understand that under the indentures that neither U.S.
18 Bank nor any of the holders could at this date notice an
19 acceleration in any event?

20 MR. WAHL: Object to the form.

21 THE WITNESS: Are you asking me if I
22 believe acceleration is not an option anymore?

23 Q. (BY MR. BRENNAN) In other words, yes.

24 A. No.

25 Q. You don't believe that?

1 A. U.S. Bank hasn't been harmed. We're a fiduciary for the
2 bondholder, so we're concerned about the holder's interests.

3 Q. How have the holders been harmed?

4 A. Well, specifically I'd have to ask them. But they've gone a
5 year without any meaningful financial information, so it's --
6 imagine they could be harmed.

7 Q. Have any of the holders indicated to U.S. Bank that they've
8 been harmed?

9 MR. WAHL: Object to the extent it calls
10 for the conclusion of attorney/client privileged information.

11 Answer if you're able without compromising the
12 privilege.

13 THE WITNESS: Yeah, I guess it's -- I'll
14 have to say I can't answer that.

15 Q. (BY MR. BRENNAN) So you're not able to provide me any
16 information in terms of how the holders may have been harmed
17 as a result of Finisar's not making certain SEC filings until
18 December 4, 2007?

19 A. Yeah. I can just say they have been not happy that they have
20 been without financial information.

21 Q. Have any of them told you that?

22 A. They have expressed that, yeah.

23 Q. What have they said?

24 MR. WAHL: Let me make the same
25 objection. Past answering that on a "yes" or "no," if you

1 its internal investigation regarding its historical stock
2 option grant practices and thus did not make certain SEC
3 periodic filings, you are aware that Finisar did make other
4 SEC filings, right?

5 A. Yes.

6 Q. Such as Form 8-Ks and Form 12-B25 reports?

7 A. Yes.

8 Q. You got copies of those at U.S. Bank, right?

9 A. Yes.

10 Q. And did any of the holders request copies of any of those
11 documents?

12 A. No.

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REDACTED
-Pursuant to Protective Order-

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23 A. I don't believe so.

24 Q. To your knowledge, has any holder at any time ever made a
25 request of U.S. Bank that U.S. Bank provide to it copies of

1 any SEC filings that Finisar has made with the SEC?

2 A. Provide copies to it?

3 Q. Yes.

4 A. I don't believe so.

5 Q. Has U.S. Bank ever transmitted to any holders any SEC filings

6 that Finisar has made?

7 A. I don't believe so.

8 Q. So then, to your observation, none of the holders would be

9 looking to U.S. Bank as a source of SEC filings that Finisar

10 had made, right?

11 MR. WAHL: Object to the form of the

12 question.

13 THE WITNESS: I don't know. They may

14 look to us as a source.

15 Q. (BY MR. BRENNAN) Well, have any of the holders made a request

16 of SEC filings that Finisar has made from U.S. Bank?

17 MR. WAHL: Object to the form.

18 THE WITNESS: No.

19 Q. (BY MR. BRENNAN) And U.S. Bank has never provided to any

20 holders any copies of Finisar SEC filings, right?

21 A. Right.

22 Q. So what in your mind would be the basis for any suggestion

23 that any holder would be looking to U.S. Bank as a source for

24 Finisar SEC filings?

25 MR. WAHL: Object to the form.

1 THE WITNESS: Well, I don't want to
2 unequivocally rule out that they might ever ask us for it
3 just because the three holders have not.

4 Q. (BY MR. BRENNAN) Are you aware of any holder having ever
5 asked for SEC filings made for Finisar?

6 A. No.

7 Q. And you're not aware of U.S. Bank ever providing to any
8 holder any Finisar SEC filings, right?

9 A. I'm not aware of that.

10 Q. To your knowledge, how have the holders obtained information
11 regarding the status of Finisar?

12 MR. WAHL: Object to the form.

13 Answer if you're able.

14 THE WITNESS: I would be speculating.

15 Q. (BY MR. BRENNAN) You don't know?

16 A. I don't know.

17 Q. In any of the notices or annual reports that have been
18 provided by U.S. Bank to holders with U.S. Bank with respect
19 to the indentures that are the subject of this litigation,
20 has U.S. Bank ever provided any financial information
21 regarding the Finisar Corporation?

22 A. No.

23 Q. If Finisar had made filings with the SEC that U.S. Bank
24 contends would have been timely and it provided copies of
25 such reports within 15 days of their having been filed with

1 the SEC, what would U.S. Bank have done with those reports?

2 MR. WAHL: Object to the form.

3 THE WITNESS: We would have filed them.

4 Q. (BY MR. BRENNAN) Filed them where?

5 A. In our file.

6 Q. And that's where they would have sat, right?

7 A. Right.

8 Q. U.S. Bank would not have undertaken to have forwarded any of
9 those financial reports to any holder, right?

10 A. Right.

11 Q. U.S. Bank has never provided any analysis regarding the
12 financial condition to any holder, has it; that is, the
13 financial condition of Finisar?

14 A. No.

15 Q. Has U.S. Bank ever undertaken to analyze the financial
16 condition of Finisar?

17 A. No.

18 Q. Have you ever undertaken any review of the financial
19 condition of Finisar?

20 A. No.

21 Q. Do you know what the financial condition is of Finisar?

22 MR. WAHL: Object to the form.

23 THE WITNESS: No.

24 Q. (BY MR. BRENNAN) Have you ever reviewed the NASDAQ stock
25 trading price of Finisar?

1 pay U.S. Bank's claim fees in exchange for dismissal or
2 discontinuation of litigation?

3 A. I don't recollect that, but --

4 Q. But for the claim fees by U.S. Bank, what purpose did
5 continuing with the litigation serve in terms of U.S. Bank's
6 interests?

7 MR. WAHL: Object to the form.

8 THE WITNESS: It's really as a fiduciary
9 for our holders, we need a ruling from the judge so that we
10 can assess -- you know, our holders can assess what their
11 next steps would be.

12 Q. (BY MR. BRENNAN) Have the holders been informed that there
13 are three Federal District Courts that have ruled on this
14 issue?

15 A. Yes.

16 Q. And have any of the holders indicated they need more guidance
17 than those three Federal Court decisions?

18 MR. WAHL: Let me instruct you not to
19 answer in such a way that would compromise the
20 attorney/client privilege, but answer if you can.

21 THE WITNESS: No.

22 Q. (BY MR. BRENNAN) I'm sorry?

23 A. No.

24 Q. Is there something that U.S. Bank feels it needs more than
25 the three District Court opinions that have been issued?

1 STATE OF WASHINGTON) I, Connie Recob,
2) ss CCR 2631 a
3 County of Snohomish) duly authorized Notary
4 Public in and for the
5 State of Washington
6 residing at Everett,
7 do hereby certify:
8
9

10 That the foregoing deposition of DIANA JACOBS was
11 taken before me and completed on March 26, 2008, and
12 thereafter was transcribed under my direction; that the
13 deposition is a full, true and complete transcript of the
14 testimony of said witness, including all questions, answers,
15 objections, motions and exceptions;

16 That the witness, before examination, was by me
17 duly sworn to testify the truth, the whole truth, and nothing
18 but the truth, and that the witness reserved the right of
19 signature;

20 That I am not a relative, employee, attorney or
21 counsel of any party to this action or relative or employee
22 of any such attorney or counsel and that I am not financially
23 interested in the said action or the outcome thereof;

24 That I am herewith securely sealing the said
25 deposition and promptly delivering the same to Attorney
STERLING A. BRENNAN.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal this 10th day of April, 2008.

Connie Recob
Notary Public in and for the State
of Washington, residing at Everett.